* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Reserve: September 04, 2009
Date of Order: September 25, 2009

**+ CCP(O) No.75/2007 In OMP No.288/2006**

**% 25.09.2009**

**M/S. NATIONAL AGRICULTURAL COR. MARKETING**
**.... Petitioner**

Through : Mr. Saran Suri, Adv.

Versus

**RELIANCE POLYCRETE LTD. .... Respondents**

Through: Mr. Aman Lekhi, Sr. Adv. with
Mr. B.C.Agarwal, Adv.

**JUSTICE SHIV NARAYAN DHINGRA**

1. Whether reporters of local papers may be allowed to see the judgment?

2. To be referred to the reporter or not?

3. Whether judgment should be reported in Digest?

**ORDER**

1. By this order I shall dispose of this application for Contempt of the Court made by the petitioner against the respondent/contemnor on the ground that the respondent deliberately did not comply with the order of the Court dated 2nd April, 2007.

2. There was an admission made by the respondent about a sum of Rs.18,38,75,000/- having received as a loan and not paid back. This Court vide order dated 2nd April 2007 directed respondent/contemnor to furnish an unconditional bank guarantee in

favour of the Registrar General of this Court to the extent of admitted amount within a period of 30 days. The respondent failed to furnish the bank guarantee hence the applicant filed present contempt petition against the respondent/contemnor. In the affidavit of reply to the petition, the proposed contemnor has submitted that the contemnor has not committed any willful disobedience of the order or direction of the Court. It is stated that for issuance of the bank guarantee of Rs.18.38 crores, 100% cash margin, i.e., of Rs.18.38 crores was required by the bank or in alternative cash margin of 25% and property worth 150% of the value of the bank guarantee was required. The respondent did not have sufficient financial resources or the property to obtain a bank guarantee and there was no willful disobedience of the order. The counsel for the applicant stated that the respondent/contemnor had deliberately not furnished the bank guarantee.

3. Counsel for the contemnor argued that there was no deliberate non-compliance of the order and it was financial inability of the contemnor due to which order could not be complied with and because of this, the contemnor cannot be punished. He relied on ***Indian Overseas Bank vs. Lalit Kumar Aggarwal and Anr.*** (2003) Company cases 799 and ***R & N Dey & Ors. vs. Bhagyabati Pramanik & Ors***. (2004) SCC 400. The Supreme Court in ***R & N Dey (Supra)*** had observed as under:-

> "We may reiterate that the weapon of contempt is not to be used in abundance or misused. Normally, it cannot be used for execution of the decree or implementation of an order for which alternative remedy in law is provided for. Discretion given to the court is to be exercised for maintenance of the court's dignity and majesty of law. Further, an aggrieved party has no right to insist that the court should exercise such jurisdiction as contempt is between a contemner and the court. It is true that in the present case, the High Court has kept the matter pending and has ordered that it should be heard along with the first appeal. But, at the same time, it is to be noticed that under the coercion of contempt proceedings, appellants cannot be directed to pay the compensation amount which they are disputing by asserting that claimants were not the owners of the property in question and that decree was obtained by suppressing the material fact and by fraud. Even presuming that the claimants are entitled to recover the amount of compensation as awarded by the trial court as no stay order is granted by the High Court, at the most they are entitled to recover the same by executing the said award wherein the State can or may contend that the award is a nullity. In such a situation, as there was no willful or deliberate disobedience of the order, the initiation of contempt proceedings was wholly unjustified."

4. I consider that in this case the contention of the respondent/contemnor has to be believed on the face of it since the petitioner has not brought to notice of this Court any fact contrary to

the contention of the contemnor showing that the contemnor was having sufficient liquidity to furnish to the bank or had property/security with 25% amount which he could have furnished to the bank. It does not seem to be a case of the deliberate defiance of the order of the Court. The Contempt Petition is hereby dismissed.

**September 25, 2009** **SHIV NARAYAN DHINGRA J.**
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